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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

INDIGENOUS ENVIRONMENTAL NETWORK)
and NORTH COAST RIVERS ALLIANCE,)

Plaintiffs,)

vs.)

UNITED STATES DEPARTMENT OF STATE,)
et al.,)

Federal Defendants,)

CV 17-29-GF-BMM
CV 17-31-GF-BMM

**INDIGENOUS
ENVIRONMENTAL
NETWORK AND NORTH
COAST RIVERS
ALLIANCE'S REQUEST FOR
JUDICIAL NOTICE;
DECLARATION OF
COUNSEL**

Hearing: May 24, 2018
Time: 10:00 a.m.

Judge: Hon. Brian M. Morris

and

TRANSCANADA KEYSTONE PIPELINE and
TRANSCANADA CORPORATION,

Defendant-Intervenors.

REQUEST FOR JUDICIAL NOTICE

Plaintiffs Indigenous Environmental Network and North Coast Rivers Alliance respectfully request that this Court take judicial notice of the following Exhibits 1 and 2, Orders of the Nebraska Public Service Commission, which are relevant to plaintiffs' concurrently submitted Memorandum of Points and Authorities in Support of Motion for Summary Judgment:

Exhibit 1: Nebraska Public Service Commission, Order, Application No. OP-0003, In the Matter of the Application of TransCanada Keystone Pipeline, L.P. , Calgary, Alberta, seeking approval for Route Approval of the Keystone XL Pipeline Project Pursuant to the Major Oil Pipeline Siting Act, November 20, 2017;

Exhibit 2: Nebraska Public Service Commission, Order Denying Motions for Reconsideration, Application No. OP-0003, In the Matter of the Application of TransCanada Keystone Pipeline, L.P. , Calgary, Alberta, seeking approval for Route Approval of the Keystone XL Pipeline Project Pursuant to the Major Oil

Pipeline Siting Act, December 19, 2017.

These exhibits should be noticed because their authenticity is not subject to reasonable dispute and they are relevant to the issues before this Court.

Fed.R.Evid. 201(b), (c)(2). Their contents are “not subject to reasonable dispute because” they “can be accurately and readily determined from [a] source[] whose accuracy cannot reasonably be questioned” – the Nebraska Public Service Commission. Fed.R.Evid. 201(b) (“The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned”).

Courts may take judicial notice of undisputed matters of public record. *Lee v. City of Los Angeles* (“*Lee*”), 250 F.3d 668, 689 (9th Cir.2001); *see also Interstate Natural Gas Co., v. Southern California Gas Co.*, 209 F.2d 380, 385 (9th Cir. 1953) (“We may take judicial notice of records and reports of administrative bodies”); *Western Radio Services Co., v. Qwest Corporation*, 530 F.3d 1186, 1192 n. 4 (9th Cir. 2008) (court may take judicial notice of Public Utility Commission’s order); *Daniels-Hall v. National Education Association*, 629 F.3d 992, 998-999 (9th Cir. 2010) (court may take judicial notice of publicly available information contained on government website).

Both exhibits are orders of the Nebraska Public Service Commission and are matters of public record. They are relevant because they identify the Keystone

XL route through the state of Nebraska as approved by the Nebraska Public Service Commission *months after* defendants issued the Presidential Permit, Record of Decision, and National Interest Determination approving the Project.

These documents refute defendants’ argument that their Project approvals are sufficient under the National Environmental Policy Act, the Endangered Species Act, and the Administrative Procedure Act. They are not being offered to demonstrate the truth of the facts asserted within the filings; judicial notice is requested because the mere approval of these orders demonstrates that the federal government’s previous approvals did not consider feasible alternatives nor the impacts of the Project along the approved route.

This Court must judicially notice Exhibits 1 and 2 because plaintiffs have “supplied [the Court] with the necessary information” to show that these documents are publicly available and are “not subject to reasonable dispute.” Fed.R.Evid. 201(b), (c)(2).

Dated: February 9, 2018

PATTEN, PETERMAN, BEKKEDAHN &
GREEN, PLLC

s/ James A. Patten
JAMES A. PATTEN

Dated: February 9, 2018

LAW OFFICES OF STEPHAN C. VOLKER

s/ Stephan C. Volker
STEPHAN C. VOLKER (Pro Hac Vice)

Attorneys for Plaintiffs

INDIGENOUS ENVIRONMENTAL NETWORK
and NORTH COAST RIVERS ALLIANCE

DECLARATION OF COUNSEL

I, Stephan C. Volker, hereby declare:

1. I am lead counsel for plaintiffs in this proceeding, and I have personal knowledge of the following matters.

2. Exhibits 1 and 2 hereto are true and correct copies of the public records they purport to be, as available from the Nebraska Public Service Commission's website at http://www.psc.nebraska.gov/natgas/Keystone_Pipeline_Orders.html.

I declare under penalty of perjury that the foregoing facts are true of my personal knowledge, that I am competent to and if called would so testify, and that this declaration was executed on February 9, 2018, in Berkeley, California.

s/ Stephan C. Volker
STEPHAN C. VOLKER (Pro Hac Vice)

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2018, a copy of the foregoing
**INDIGENOUS ENVIRONMENTAL NETWORK AND NORTH COAST
RIVERS ALLIANCE'S REQUEST FOR JUDICIAL NOTICE;
DECLARATION OF COUNSEL** was electronically served on all counsel of
record via the Court's CM/ECF system.

s/ Stephan C. Volker
Attorneys for Plaintiffs
INDIGENOUS ENVIRONMENTAL NETWORK
and NORTH COAST RIVERS ALLIANCE